

**EXHIBIT D**

**Exhibit 6 of BTCCT-20031124AOH,  
Sweetwater Broadcasting Company  
Form 315 Application filed 11/15/03**

**BOZEMAN TRAIL COMMUNICATIONS COMPANY**

1500 Foremaster Lane  
Las Vegas, Nevada 89101  
Phone: (702) 642-3333  
Fax: (702) 642-3093

March 16, 2001

**VIA FACSIMILE AND FEDERAL EXPRESS**

Paul Uhlmann, III  
Uhlmann/Latshaw Broadcasting, LLC  
1009 Central Street  
Kansas City, Missouri 64105

**RE: Exercise of Option of Bozeman Trail Communications Company  
pursuant to July 30, 1998 Stock Purchase Agreement**

Dear Mr. Uhlmann:

Notice is hereby given pursuant to Sections 7 and 14 of the Stock Purchase Agreement dated July 30, 1998, by and among Uhlmann/Latshaw Broadcasting, LLC (hereinafter "ULB"), Sweetwater Broadcasting Company (hereinafter "SBC"), and Bozeman Trail Communications Company (hereinafter "BTCC") ("Agreement"), that BTCC is exercising its option right, subject to prior FCC approval, to acquire ULB's 51% interest in SBC. As has been agreed between ULB and BTCC, and for purposes of establishing the writing setting forth the Purchase Price pursuant to Section 7, the Purchase Price shall be ten thousand dollars (\$10,000).

This exercise of option and notice thereof is timely given pursuant to Section 7(a) of the Agreement as it is within the 45-day period commencing on the date which is ten days after the station's February 12, 2001 on air date.

Pursuant to Section 7(a) of the Agreement, BTCC shall pay the Purchase Price to ULB at Closing (defined below), in immediately available funds. Pursuant to Section 7(b) of the Agreement, Closing shall occur within five (5) business days after approval of the transfer of control application (FCC Form 315) ("Application") by the Federal Communications Commission ("FCC") becomes a Final Order (herein referred to as "Closing"). BTCC shall begin processing the Application right away and would like to have the Application on file with the FCC no later than March 15, 2001, with BTCC paying all filing fees and related expenses. BTCC requests ULB's cooperation in promptly seeking the necessary FCC approval.

Paul Uhlmann, III  
March 16, 2001  
Page 2

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Please contact me with any questions or concerns you might have. Thank you for your cooperation in this matter.

Sincerely,



James E. Rogers  
President

Purchase Price Agreed to and Accepted this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

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Paul Uhlmann, III  
Uhlmann/Latshaw Broadcasting, LLC.

**EXHIBIT E**

**Signature page of Form 323  
File No. BOAO-20030603AEM**

(b) Respondent certifies that equity and financial interests not set forth in response to Question 9(a) are non-attributable.	<input checked="" type="radio"/> Yes <input type="radio"/> No  <input type="radio"/> N/A
	See Explanation in [Exhibit 2]
(c) Is the respondent or any party holding an attributable interest in the respondent also the holder of an attributable interest in any other broadcast station or in any cable or newspaper entities in the same market or with overlapping signals in the same broadcast service, as described in 47 C.F.R. Sections 73.3555 and 76.501?	<input type="radio"/> Yes <input checked="" type="radio"/> No
If "Yes", submit an Exhibit identifying the holder of that other attributable interest, listing the call signs, locations and facilities identifiers of such other broadcast stations, and describing the nature and size of the ownership interest and the positions held in the other broadcast, cable or newspaper entities.	[Exhibit 3]
(d) Are any of the individuals listed in response to Question 9(a) related as parent-child, husband-wife, brothers and sisters?	<input checked="" type="radio"/> Yes <input type="radio"/> No
If "Yes", submit an Exhibit setting forth full information as to the family relationship	[Exhibit 4]
(e) Is respondent seeking an attribution exemption for any officer or director with duties unrelated to the licensee or permittee?	<input type="radio"/> Yes <input checked="" type="radio"/> No
If "Yes", submit an Exhibit identifying that individual by name and title, fully describing that individual's duties and responsibilities, and explaining why that individual should not be attributed an interest.	[Exhibit 5]

### SECTION III - CERTIFICATION

I certify that I am VICE PRESIDENT - OPERATIONS

(Official Title)

of SWEETWATER BROADCASTING COMPANY

(Exact legal title or name of respondent)

and that I have examined this Report and that to the best of my knowledge and belief, all statements in this Report are true, correct and complete.

(Date of certification must be within 60 days of the date shown in Question 5, Section II and in no event prior to that date.)

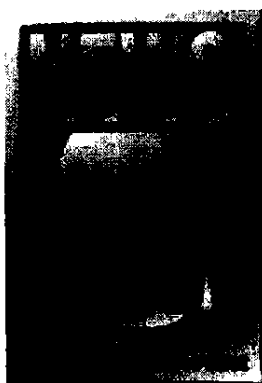
Signature JAMES E. ROGERS	Date 05/30/2003
Telephone Number of Respondent (Include area code) 7026423333	

WILLFUL FALSE STATEMENTS ON THIS FORM ARE PUNISHABLE BY FINE AND/OR IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001), AND/OR REVOCATION OF ANY STATION LICENSE OR CONSTRUCTION PERMIT (U.S. CODE, TITLE 47, SECTION 312(a)(1)), AND/OR FORFEITURE (U.S. CODE, TITLE 47, SECTION 503).

### Exhibits

## **EXHIBIT F**

### **Sunbelt's Internet Worldwide Web Site**



## MEMBER CENTER

- Create Account
- Log In

HOME  
 NEWS  
 TV  
 RADIO  
 LISTENING  
 LOCAL  
 NATIONAL  
 INTERNATIONAL  
 SPORTS  
 ENTERTAINMENT  
 BUSINESS  
 HEALTH  
 EDUCATION  
 TRAVEL  
 REAL ESTATE  
 CARS  
 WEATHER  
 CLASSIFIEDS  
 ADVERTISE

Sunbelt Communications  
 Company  
 Jobs at 3  
 Reporters  
 Producers  
 Politics  
 Pets & Channel 3 Party  
 Animals  
 News 3 Gift Shop



Advertise on KVBC.com



Are you  
 STILL trying  
 to lose  
 weight?

**MARKETPLACE:** Auto | Jobs | Personals | Yellow Pages

**LIFESTYLE:** House & Home | Money | Pets | Recipes | Relationships | Travel | Weddings

February 1



JFK High  
 School



Ridgemont  
 High School



Find Your Old  
 School Here



classmates.com

## Where News Comes First

Learn more about the stations in the Sunbelt Communications family

## Sunbelt Communications Company



Sunbelt Communications Company, established in 1979, is the parent company of eight television stations in Nevada, Arizona, Idaho, Montana and Wyoming.

[More >>](#)

## Sunbelt Auto Collection



Click here to view the Sunbelt Auto Collection. The collection is quite extensive, so be sure to keep coming back to see the newest additions. Click here to see some amazing classic cars, from the 1921 Model T Ford to the 1926 REO Speedwagon, from the 1951 Hudson Commodore to the 1984 Avanti.

[More >>](#)

## KVBC Channel 3 Las Vegas



Gene Greenberg, Station Manager  
 (702) 642-3333

[More >>](#)

## KRNV Channel 4 Reno



Ralph Todde, General Manager  
 (775) 322-4444

[More >>](#)

## KYMA Channel 11 Yuma



Paul Heebink, Station Manager  
 (520) 782-1111

[More >>](#)

## KTVH Channel 12 Helena



Wendy Bingham, Business Manager  
 (406) 457-1212

[More >>](#)

Sunbelt Communications

## KPVI Channel 6 Pocatello



Bill Fouch, Station Manager  
 (208) 232-6868

[More >>](#)

## KENV Channel 10 Elko



Jim Elliott, Station Manager  
 (775) 777-8500

[More >>](#)

## KJWY Channel 2 Jackson



Cristel Rahme, Station Manager  
 (307) 733-2066

[More >>](#)

## KXTE Channel 35 Twin Falls



Twin Falls (208) 235-3188

[More >>](#)

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 check the status  
 of your refund  
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GERD.

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**EXHIBIT G**

**Petition to Revoke and Deny the Licenses,  
Authorizations and Applications of Rocky Mountain  
Broadcasting Company and Beartooth Communications  
Company filed February 13, 2004**

STAMP & RETURN

Before the  
Federal Communications Commission  
Washington, DC 20554

RECEIVED

FEB 13 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re: )  
)  
Rocky Mountain Broadcasting Company )  
)  
Helena, MT KMTF )  
(Facility ID# 68717) )  
)  
Great Falls, MT NEW )  
(Facility ID# 131183) )  
Great Falls, MT NEW )  
(Facility ID# 159494) )  
)  
Beartooth Communications Company )  
)  
Helena, MT KTVH )  
(Facility ID# 5290) )  
Helena, MT NEW )  
(Facility ID# 127855) )  
Helena, MT NEW )  
(Facility ID# 127854) )  
)  
Lewistown, MT NEW )  
(Facility ID# 127765) )  
Lewistown, MT K08NR )  
(Facility ID# 127767) )  
)  
Kalispell, MT NEW )  
(Facility ID# 127798) )  
Kalispell, MT NEW )  
(Facility ID# 127801) )  
Kalispell, MT NEW )  
(Facility ID# 127828) )  
Kalispell, MT NEW )  
(Facility ID# 127761) )  
)

BLCT-20000830AFL

BNPTT-20000828BIK

BNPTVB-20030930BBS

BLCT-20000830AFI

BNPTTL-20000829AJY

BNPTTL-20000829AJX

BNPTVL-20000829AIY

BNPTVL-20000829AIZ

BNPTVL-20000829AJN

BNPTTL-20000829AJP

BNPTTL-20000829AJS

BNPTTL-20000829AIX

Havre, MT	NEW	)	BNPTVL-20000829AHE
(Facility ID# 127234)		)	
Havre, MT	NEW	)	BNPTVL-20000829AKB
(Facility ID# 127860)		)	
Havre, MT	K11VL	)	BNPTVL-20000829AKA
(Facility ID# 127859)		)	
Great Falls, MT	NEW	)	BNPTVL-20000829AHJ
(Facility ID# 127241)		)	
Great Falls, MT	NEW	)	BNPTVB-20030915ACY
(Facility ID# 159493)		)	
Great Falls, MT	NEW	)	BNPTTL-20000829AHI
(Facility ID# 127239)		)	
Great Falls, MT	NEW	)	BNPTTL-20000829AHH
(Facility ID# 127238)		)	
Great Falls, MT	NEW	)	BNPTTL-20000829AHF
(Facility ID# 127236)		)	
Billings, MT	NEW	)	BNPTVL-20000829ALP
(Facility ID# 129207)		)	
Billings, MT	NEW	)	BNPTTL-20000829AJW
(Facility ID# 127852)		)	
Billings, MT	NEW	)	BNPTTL-20000829AJU
(Facility ID# 127846)		)	
Billings, MT	NEW	)	BNPTTL-20000829AJT
(Facility ID# 127841)		)	
Billings, MT	NEW	)	BNPTTL-20000829AHO
(Facility ID# 127246)		)	
Butte, MT	NEW	)	BNPTTL-20000829AHK
(Facility ID# 127242)		)	
Butte, MT	NEW	)	BNPTTL-20000829AHL
(Facility ID# 127243)		)	
Butte, MT	NEW	)	BNPTVL-20000829AHM
(Facility ID# 127244)		)	
Missoula, MT	NEW	)	BNPTVL-20000829AJF
(Facility ID# 127781)		)	
Missoula, MT	NEW	)	BNPTVL-20000829AJG
(Facility ID# 127783)		)	

Missoula, MT	NEW	)	BNPTTL-20000829AJJ
(Facility ID# 127790)		)	
Missoula, MT	NEW	)	BNPTTL-20000829AJL
(Facility ID# 127796)		)	
Bozeman, MT	NEW	)	BNPTVL-20000829AHN
(Facility ID# 127245)		)	
<hr/>			

**PETITION TO REVOKE AND DENY THE LICENSES, AUTHORIZATIONS AND  
APPLICATIONS OF ROCKY MOUNTAIN BROADCASTING COMPANY AND  
BEARTOOTH COMMUNICATIONS COMPANY**

Arthur V. Belendiuk, Esquire  
Smithwick & Belendiuk, PC  
5028 Wisconsin Avenue, NW  
Suite 301  
Washington, D.C. 20016  
Counsel for MMM License LLC

February 10, 2004

MMM License LLC, ("MMM") by its attorneys, hereby files this Petition to Revoke and Deny the Licenses, Authorizations and Applications of Rocky Mountain Broadcasting Company ("Rocky Mountain") and Beartooth Communications Company ("Beartooth"). As discussed herein, Rocky Mountain and Beartooth (1) lack the necessary financial resources to construct the above captioned pending applications; (2) have made material misrepresentations concerning their financial qualifications; and (3) have violated the FCC's multiple ownership rule.<sup>1</sup>

### **Standing**

MMM is the licensee of KTGF-TV, Great Falls, Montana; KWTB-TV Butte, Montana; KTMG-TV, Missoula, Montana; KWYB-LP, Bozeman, Montana; KTMF-LP, Kalispell, Montana; and K47DP, Lewiston, Montana. In addition, through an affiliated company MMM has applications pending to acquire KFBB-TV, Great Falls, Montana; KHBB-LP, Helena, Montana; K43DC, Lewistown, Montana; KULR-TV, Billings, Montana; K66BR, Livingston, Montana; K24FL, Columbus, Montana; and K06FE, Miles City, Montana. MMM is a competitor of Rocky Mountain and Beartooth; as such it has standing to file this petition. *FCC v. Sanders Brothers Radio Station*, 309 US 470 (1940) (*Sanders Brothers*). In finding that *Sanders Brothers* had standing the Supreme Court reasoned that "one likely to be financially injured by the issue of a license would be the only person having a sufficient interest to bring to the attention of the appellate court errors of law in the action of the Commission in granting the license."<sup>2</sup>

### **Background**

Beartooth is the licensee of full-power television station KTVH, Helena, Montana. It holds the construction permit for two un-built television translators, K08NR, Lewistown, Montana and K11VL Havre, Montana.<sup>3</sup> It also has applications pending for 27 translator and low-power television station facilities. Beartooth is a wholly owned subsidiary of Sumbelt Communications

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<sup>1</sup> 47 C.F.R. §73.3555.

<sup>2</sup> *Sanders Brothers*, 309 US 477.

<sup>3</sup> The Commission's record show that both translators are not on the air.

Company ("Sunbelt"). (Ex. 1, Beartooth's Ownership Report) James E. Rogers is Beartooth's Chairman, C.E.O. and Director. (Ex.1) Sunbelt's single majority shareholder, with 93.22% of the voting rights and equity, is James E. Rogers, Trustee of the James E. Rogers Trust. (Ex. 2 Sunbelt's Ownership Report) Sunbelt through various subsidiary companies is the licensee of 13 full power television stations. (Ex. 3, Relevant portions of FCC Form 315 Application for Consent to Transfer from Sweetwater Broadcasting Company to Bozeman Trail Communications Company)

Rocky Mountain is the licensee of KMTF, Helena Montana. It is also the applicant for a television translator and a television booster in Great Falls, Montana. Uhlmann/Latshaw Broadcasting, LLC ("Uhlmann/Latshaw") owns 51% of the equity and assets of Rocky Mountain. (Ex. 4, Rocky Mountain's Ownership Report) The ownership of the 49% interest in Rocky Mountain is not disclosed. However, based on information and belief, 49% of Rocky Mountain is owned by Sunbelt or a subsidiary of Sunbelt.<sup>4</sup> Sunbelt, the ultimate parent entity of the licensee of KTVH, Helena, Montana operates Rocky Mountain's Helena, Montana station pursuant to the terms of an attributable Time Brokerage Agreement ("TBA"). (Ex. 4) Thus, the only two full-power television stations licensed to the Helena, Montana DMA are tied together by common ownership, finances and operations.

**Beartooth and Rocky Mountain Lack Reasonable Assurance of Available Financing to Construct and Operate 29 Pending Applications for Television Translators, Low-Power Television Stations and Boosters.**

On February 19, 2002, Beartooth filed FCC Form 337, Application for Extension of Time

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<sup>4</sup> See e.g. Exhibit 3, FCC Form 315 Application for Consent to Transfer Control from Sweetwater Broadcasting Company, ("Sweetwater Broadcasting") 51% owned by Uhlmann/Latshaw and 49% by Bozeman Trail Communication Company, ("Bozeman Trail") a Sunbelt subsidiary. According to the application, on July 30, 1998 Uhlmann/Latshaw entered into a stock purchase agreement whereby Bozeman Trail purchased a 49% stock interest in Sweetwater and acquired an option to purchase the remaining 51% of the issued and outstanding stock held by Uhlmann/Latshaw for a purchase price of \$10,000. From the available evidence, it appears that Sunbelt entered into a similar agreement with Uhlmann/Latshaw for the undisclosed 49% interest in Rocky Mountain.

to Construct a Digital Television station. (Ex. 5) In response to question 5, Beartooth certified that it lacked the necessary financing to construct its digital facilities.<sup>5</sup> On October 2, 2002, Beartooth filed a second extension of time request. (Ex. 6) Beartooth again certified that it lacked the necessary financing to construct a digital television facility. Beartooth, as part of the public record, submitted a narrative statement in which it stated,

Beartooth has been operating at a loss since 1998, and due to the loan constraints on its parent company, Sunbelt. . . any attempts to obtain additional funds are neither prudent nor beneficial. As further support of its financial difficulty, Beartooth is filing separately herewith updated financial statements showing Beartooth continues to operate at a net loss, complicating the goal for building the KTVH digital facilities.

On July 11, 2003, Beartooth filed a third extension request. (Ex. 7) Once again, Beartooth certified that it did not have the financial resources to construct a digital television facility.

Beartooth's narrative statement in its third request for extension of time states,

While Beartooth had hoped to have the funds on hand necessary for ordering the KTVH digital equipment from Harris Corp. for delivery in early 2003, there was a substantial loss in expected advertising revenue. . . .

Beartooth has placed a purchase order with Harris Corp. for the digital equipment necessary to operate KTVH with the minimal digital facilities that will still allow for coverage over Helena. A copy of the purchase order is attached hereto. Because of the expected revenue stream for the remainder of 2003, and the construction timetable for the other five Sunbelt subsidiary television broadcast stations, Beartooth can only make an initial downpayment on the equipment and will not be able to make payment in full on the necessary digital equipment for delivery until early 2004.

The invoice for the digital equipment necessary to operate with minimal facilities is \$106,652.

(Ex. 7) The extension application shows that Beartooth submitted a check for only \$35,550, because, as it admits, it is unable to make the payment in full.

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<sup>5</sup> Pursuant to Section 0.459, Beartooth requested that its financial showing be kept confidential.

Beartooth is by no means the only Sunbelt subsidiary in deep financial trouble. For example, on February 19, 2002, Oregon Trail Broadcasting ("Oregon Trail"), a Sunbelt subsidiary, filed an FCC Form 337 Application for Extension of Time in which it certified that it did not have the necessary funds to construct even a minimal digital television facility.<sup>6</sup> (Ex. 8) On October 2, 2002, Oregon Trail filed a second extension application. (Ex. 9) Its second extension request is almost identical to Beartooth's second extension request. Oregon Trail's narrative statement claims that it has been operating at a net loss since 1998 and "due to the loan constraints on its parent company, Sunbelt. . . any attempts to obtain additional funds are neither prudent nor beneficial." Like Beartooth, Oregon Trail on July 11, 2003 filed a third extension request. (Ex. 10) Also like Beartooth in its third extension request, Oregon Trail affirms that it just does not have the funds to construct its digital facility.

At least four other Sunbelt subsidiaries have repeatedly certified that they lack sufficient funds to construct their digital facilities. Each financially troubled subsidiary claims that because of loan constraints on Sunbelt, attempts to "obtain additional funds are neither prudent nor beneficial." These Sunbelt subsidiaries, Ruby Mountain Broadcasting Company, Sierra Broadcasting Company, Two Ocean Broadcasting Company, and Falls Broadcasting Company have each certified, on three separate occasions during the course of the last two years, that they lack the funds to construct and operate digital television facilities.<sup>7</sup>

Rocky Mountain, for its part, has also repeatedly certified that it lacks the financial resources to construct its digital television facility in Helena, Montana. On March 1, 2002, Rocky Mountain filed its first extension request.<sup>8</sup> (Ex. 23) In response to question 5 on FCC Form 337, Rocky Mountain certified that it did not have sufficient funds to construct even a minimal digital

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<sup>6</sup> Like Beartooth, Oregon Trail, pursuant to Section 0.459, requested that its financial showing be kept confidential.

<sup>7</sup> See, Exhibits 11 through 22.

<sup>8</sup> Like Beartooth, pursuant to Section 0.459, Rocky Mountain requested that the Commission keep its financial showing confidential.

television facility. On October 2, 2002, Rocky Mountain filed its second request for extension of time. (Ex. 24) With this request, Rocky Mountain submitted, as part of the public record, an exhibit to its FCC Form 337. Therein Rocky Mountain stated,

As Rocky Mountain explained in its initial request, KMTF is programmed by Beartooth. . . , a subsidiary of Sunbelt. . . , pursuant to a time brokerage agreement ("TBA"). The station has suffered significant financial distress over the past four years, with Rocky Mountain just breaking even after collecting its TBA fees from Beartooth. Rocky Mountain's financial situation has not improved during the present extension period, and, as a result, the capital costs of the DTV conversion remain prohibitive for it.

The Commission is aware, however, that Sunbelt has pledged to construct the KMTF-DT facilities, despite its own operating losses at the station.

To this statement, Rocky Mountain attached the declaration of James E. Rogers, chief principal, chairman and C.E.O. of Sunbelt. Mr. Rogers' declaration states in pertinent part,

In my earlier Declaration of April 30, 2002 which was submitted with the DTV extension request for . . . Station KMTF(TV), Helena, Montana . . . I stated that Beartooth had entered into an agreement with Rocky Mountain . . . to construct a DTV facility for Station KMTF(TV), Helena, Montana. . . .

Rogers' declaration continues by stating that once the construction of the facilities is completed, Beartooth will enter into a lease to provide those facilities to Rocky Mountain.

On October 2, 2002, Beartooth and five other Sunbelt subsidiaries, each in separate filings with the Commission certified that Sunbelt did not have the funds to construct their respective digital facilities and "due to the loan constraints on its parent company, Sunbelt. . . , any attempts to obtain additional funds are neither prudent nor beneficial." On the same date, Rogers executed a Declaration claiming that Sunbelt, in addition to its other debt would undertake the construction of Rocky Mountain's digital television facilities. It appears that, in the case of Rocky Mountain, Sunbelt was committing funds it simply did not have and could not borrow. After Sunbelt made

its commitment to construct, Rocky Mountain filed a third application for extension of time, in which it certified that it still lacked the necessary financial resources to construct and operate its digital television facility. (Ex. 25)

This then brings us to Beartooth's and Rocky Mountain's 29 pending applications for low power television, translator and booster stations. Beartooth alone has 27 pending applications. Assuming that each of these applications can be built for a mere \$100,000, this means that Beartooth would need to show committed financing for 2.7 million dollars. By its own admission Beartooth lacks the \$106,000 it needs to construct its digital facility. (Ex. 7) As its exhibit in the FCC Form 337 clearly demonstrates, it was unable to pay more than a \$35,550 deposit on its digital equipment.

Rocky Mountain, for its part, fares no better. It admits that it has no money. As Rocky Mountain states, "The station has suffered significant financial distress over the past four years, with Rocky Mountain just breaking even after collecting its TBA fees from Beartooth." (Ex. 24) It appears that Rocky Mountain's sole source of financing is Sunbelt, a company which by its own admission is in deep financial trouble and has no available funds.

The Commission's requirements for an applicant's financial qualifications are well established and unambiguous. All applicants for new broadcast facilities must have reasonable assurance of committed financing sufficient to construct the proposed facility and operate it for three months without revenue at the time they file their application. *See, Merrimack Valley Broadcasting, Inc.*, 82 FCC 2d 166, 167 (1980); *Liberty Productions*, 7 FCC Rcd 7581, 7584 (1992). Beartooth and Rocky Mountain have failed this test.

Beartooth filed its low-power and television translator applications in August 2000. Beartooth admits that it has been operating at a net loss since 1998. (Ex. 6) Sunbelt's Ownership Report shows loan agreements between itself, its subsidiaries, and AT&T Commercial Finance

Corporation. (Ex. 2) These loan agreements were entered into in 1998 and 1999. Clearly, Beartooth did not have reasonable assurance of financing at the time it filed in August 2000. Equally clear, from its recent filing with the Commission, Beartooth does not have reasonable assurance of financing for its 27 pending applications.

Rocky Mountain, likewise, did not have reasonable assurance of financing at the time it filed its translator application in August 2000. As Rocky Mountain admits, "the station has suffered significant financial distress over the past four years." (Ex. 24) As for its booster application, which it filed September 30, 2003, Rocky Mountain admits it just does not have the funds to construct and operate this facility.

Beartooth and Rocky Mountain have failed to disclose to the Commission their lack of committed financing to construct and operate 29 low-power television, translator and booster stations. Where an applicant has deliberately withheld information, the FCC has followed one of two paths. It has either dismissed the application or designated it for hearing on lack of candor or misrepresentation issues. In past cases where an applicant has withheld significant information, the Commission has not hesitated to dismiss its application. See, e.g. *Garden State Broadcasting Ltd. Partnership v. FCC*, 996 F.2d 386 (D.C. Cir. 1993). In *Garden State* the Court found that the applicant had deliberately withheld information from the FCC. The Court affirmed that each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application. Further, the Court held that the FCC "is not expected to play procedural games with those who come before it in order to ascertain the truth."<sup>9</sup>

In this case, the FCC should dismiss the pending applications and designate Rocky Mountain's and Beartooth's existing licenses for hearing. The evidence indicates that Rocky Mountain and Beartooth made numerous, material misrepresentations to the FCC. Commission

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<sup>9</sup> *Garden State*, at p. 392 citing *RKO General, Inc. v. FCC*, 670 F.2d 215, 229 (D.C. Cir. 1981).

precedent establishes that misrepresentation can be either intentional or grounded in "an indifference and wanton disregard for the licensee's obligations to the Commission that is equivalent to an affirmative and deliberate intent." *Liberty Cable Co., Inc.*, 15 F.C.C. Rcd. 25050, P 50 (2000) (quoting *RKO General, Inc. v. FCC*, 216 U.S. App. D.C. 57, 670 F.2d 215, 225 (D.C. Cir. 1981)).

Beartooth and Rocky Mountain lack the financial ability to support basic licensee functions, e.g., the building of their digital television facilities. Nonetheless, they have filed for and continue to maintain 29 pending applications for facilities for which they lack the necessary funds to construct. These 29 applications demonstrate material and continuing misrepresentations to the FCC.

In their pending applications, Beartooth and Rocky Mountain have done more than misrepresent their financial qualifications. In 17 of their pending applications they have also made material misrepresentations concerning transmitter site availability. Cordillera Communications, Inc. ("Cordillera") is the parent entity of KRTV Communications, Inc., licensee of KRTV(TV) Great Falls, Montana, KPAX Communications, Inc., licensee of KPAX-TV, Missoula, Montana, KTVQ Communications, Inc., licensee of KTVQ(TV), Billings, Montana and KXLF Communications, Inc., licensee of KXLF-TV, Butte, Montana. Cordillera, through its subsidiary companies, has filed five separate petitions against the pending applications of Beartooth and Rocky Mountain.<sup>10</sup> Specifically, Cordillera claims that Beartooth and Rocky Mountain, in 17

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<sup>10</sup> See, Informal Objection filed January 16, 2004 against 4 Beartooth applications for Great Falls, Montana, BNPTVL-20000829AHJ, Facility ID# 127241; BNPTTL-20000829AHI, Facility ID# 127239; BNPTTL-20000829AHH, Facility ID# 127238; BNPTTL-20000829AHF, Facility ID# 127236.

Informal Objection filed January 16, 2004 against Rocky Mountain for a translator application in Great Falls, Montana, BNPTT-20000828BIK, Facility ID# 131183.

Informal Objection filed January 30, 2004 against 3 Beartooth applications for Butte, Montana BNPTVL-20000829AHM, Facility ID# 127244; BNPTTL-20000829AHL, Facility ID# 127243; BNPTTL-20000829AHK, Facility ID# 127242.

pending applications specified Cordillera's tower and facilities as its transmitter and antenna sites. Cordillera's petitions contain declarations under penalty of perjury which unequivocally state that neither Beartooth, nor Rocky Mountain had never contacted Cordillera, or any of its subsidiaries or employees concerning that use of any of its towers or facilities. Further, neither Beartooth, nor Rocky Mountain ever received Cordillera's permission to specify any of its towers or facilities as proposed antenna and transmitter sites. Cordillera's petitions clearly indicate that Rocky Mountain and Beartooth prepared and filed at least 17 broadcast applications with the FCC, knowing that they did not have reasonable assurance of site availability.

Because of the scope and continuing nature of the misrepresentations, Beartooth's and Rocky Mountain's licenses and authorizations should be designated for hearing to determine, in light of the numerous misrepresentations concerning reasonable assurance of financing and tower site availability, whether they have the requisite character qualifications to remain Commission licensees.

**Beartooth and Rocky Mountain Have Violated Section 73.3555 of the Commission's Rules**

Beartooth is the licensee of full power television station KTVH, Helena, Montana. Rocky Mountain is the licensee of full power television station KMTF, Helena Montana. No other full power television stations are licensed to Helena. Section 73.3555(b) prohibits a single entity from owning or holding an attributable interest in both Helena stations.

Beartooth operates KMTF pursuant to the terms of a Time Brokerage Agreement ("TBA") executed March 3, 1997. (Ex. 4) The TBA was assigned to Beartooth on October 1, 1999 and is

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Informal Objection filed January 30, 2004 against 5 Beartooth applications for Billings, Montana, BNPTVL-20000829ALP, Facility ID# 129207; BNPTTL-20000829AJW, Facility ID# 127852; BNPTTL-20000829AJU, Facility ID# 127846; BNPTTL-20000829AJT, Facility ID# 127841; BNPTTL-20000829AHO, Facility ID# 127246.

Informal Objection filed January 30, 2004 against 4 Beartooth applications for Missoula, Montana, BNPTVL-20000829AJF, Facility ID# 127781; BNPTVL-20000829AJG, Facility ID# 127783; BNPTTL-20000829AJJ, Facility ID# 127790; BNPTTL-20000829AJL, Facility ID# 127796.

not due to expire until January 26, 2007. (Ex.4) Based on recent filing by both Beartooth and Rocky Mountain, Beartooth continues to operate the station pursuant to the terms of the TBA.<sup>11</sup>

The FCC has grandfathered television TBAs entered into before November 5, 1996.<sup>12</sup> Television TBAs entered into after November 5, 1996 are not grandfathered and must comply with the requirement of the Commission's multiple ownership rule. The Beartooth/Rocky Mountain TBA was entered into after November 5, 1996 and therefore is fully attributable to Beartooth and Sunbelt.

The Commission should order Beartooth and Rocky Mountain to immediately terminate their TBA. Further, the FCC should investigate the facts and circumstances surrounding Beartooth's operation of a television station in violation of the Commission's rules and regulations.

#### **Conclusion**

As MMM has demonstrated herein, Beartooth's and Rocky Mountain's 29 pending applications should be dismissed with prejudice. Further, Beartooth's and Rocky Mountain's licenses should be designated for hearing to determine whether Beartooth or Rocky Mountain have made material misrepresentations to the FCC. If, as alleged herein, they have made material misrepresentations to the FCC, then the Administrative Law Judge should be instructed to determine whether, based on the facts developed in the hearing, Beartooth and/or Rocky Mountain possess the requisite character qualifications to remain Commission licensees.

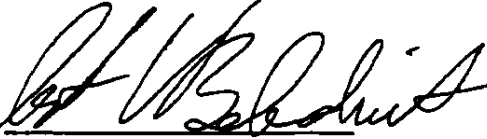
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<sup>11</sup> See, Ex. 1 Beartooth Ownership Report filed May 29, 2003; Ex. 2 Sunbelt Ownership Report filed May 29, 2003; Ex. 24, Rocky Mountain FCC Form 337 filed October 2, 2002.

<sup>12</sup> See, *Review of the Commission's Regulations Governing Television Broadcasting in MM Docket No. 91-221*, 14 FCC Red 12903, 12958-63 (1999).

Respectfully submitted,

MMM LICENSE LLC

By   
Arthur V. Belendiuk  
Its Attorney

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5028 Wisconsin Avenue, N.W.  
Suite 301  
Washington, DC 20016

(202) 363-4559

February 13, 2004

**EXHIBIT H**

**September 24, 2001 Damiano Letter**

30 Rockefeller Plaza  
New York, NY 10118  
212-644-4000  
212-644-4700-Fax  
john.damiano@nbc.com - e-mail

A Division of  
National Broadcasting  
Company, Inc.

John F. Damiano  
Executive Vice President  
Affiliate Relations



September 24, 2001

Mr. Gene Loving  
Max Media  
900 Laskin Road  
Virginia Beach, VA 23451

Dear Gene:

I am writing in response to your letter to me, dated August 10, 2001, with respect to the NBC affiliation in the Great Falls, Montana market. Although I disagree with many of the assertions set forth in the letter, I do not wish to refute each point or correct each fact at this time.

You have repeatedly told me that the content of a letter from NBC to Sunbelt Communications Company has been disclosed to you. I confirm your understanding that upon the expiration of KTGF's affiliation agreement, if certain performance and viewership criteria are satisfied, NBC will grant Sunbelt the affiliation covering Great Falls. If these criteria are not satisfied, NBC will use its business judgment and discretion to determine which station it wishes to be the NBC affiliate, as it has traditionally done upon the expiration of affiliation agreements.

You have provided me with documentation which you believe indicates that Sunbelt will be unable to satisfy the performance and viewership criteria. If your belief is correct, Max Media will be welcome to meet with NBC to discuss a continued affiliation of KTGF, as NBC decides with whom to affiliate in the Great Falls area.

Sincerely,

A handwritten signature in black ink, appearing to read "John Damiano".

John Damiano

**EXHIBIT I**

**Technical Statement Concerning  
Predicted Grade B Coverage  
duTreil, Lundin & Rackley, Inc., Consulting Engineers**

**TECHNICAL STATEMENT  
CONCERNING PREDICTED GRADE B COVERAGE MAP  
PREPARED FOR  
MMM LICENSE LLC  
GREAT FALLS, MONTANA**

The attached map was prepared on behalf of MMM License LLC, licensee of KTGF(TV), Great Falls, Montana. The map depicts the predicted Grade B contours of stations KTGF(TV), KTVH(TV), KBBJ(TV) and KBAQ(TV). Also shown are the city limits of Great Falls and Nielsen Media Research Designated Market Areas (DMA's) in the area.

The various Grade B contours shown in the attached map were computed according to the conventional FCC calculation procedures as outlined in Section 73.684 the FCC Rules. The U.S.G.S. 3-second linearly interpolated terrain database was employed in the calculation of the contours, with radials spaced every 10-degrees beginning a 0°True.

This statement and associated exhibit were prepared by me or under my direction and are true and correct to the best of my knowledge and belief.

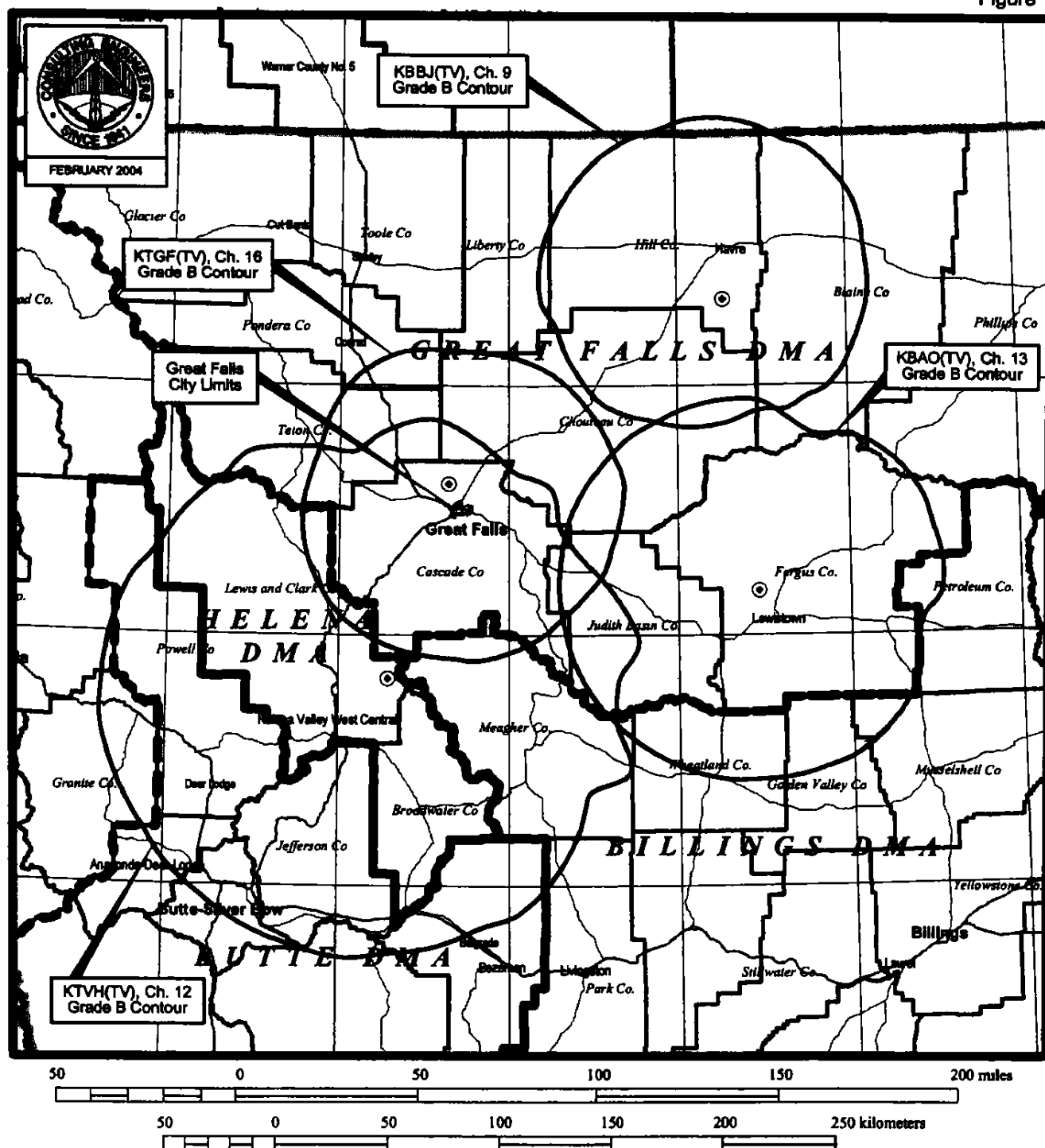


Louis Robert du Treil, Jr., P.E.

du Treil, Lundin & Rackley, Inc.  
201 Fletcher Ave.  
Sarasota, FL 34237

February 19, 2004

Figure 1



## PREDICTED GRADE B COVERAGE MAP

du Treil, Lundin & Rackley, Inc. Sarasota, Florida